

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARRYL LEE CHERRY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-292 ERIE
)	
UNITED STATES OF AMERICA,)	JUDGE MCLAUGHLIN
DR. OLSON, FCI-MCKEAN,)	MAGISTRATE JUDGE BAXTER
DR. BEAM, FCI-MCKEAN, MR. SMITH,)	
HOSPITAL ADMINISTRATOR,)	Electronically Filed
JAMES F. SHERMAN, WARDEN)	
FCI-MCKEAN, D. SCOTT DODRILL,)	
REGIONAL DIRECTOR,)	
HARRELL WATTS, ADMINISTRATOR,)	
NEWTON E. KENDIG,)	
BOP MEDICAL DIR.)	
)	
Defendants.)	

**MOTION TO EXTEND TIME TO FILE
A RESPONSIVE PLEADING AND/OR DISPOSITIVE MOTION**

Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, defendants the United States of America, Dr. Olson, FCI-McKean, Dr. Beam, FCI-McKean, Mr. Smith, Hospital Administrator, James F. Sherman, Warden FCI-McKean, D. Scott Dodrill, Regional Director, Harrell Watts, Administrator and Newton E. Kendig, BOP Medical Director, file the following Motion to Extend Time to File a Responsive Pleading and/or Dispositive Motion, and in support thereof state as follows:

1. On or about May 16, 2005, *pro se* plaintiff Darryl Lee Cherry filed an Amended Complaint in the above-captioned action, alleging that he received improper care from defendants in connection with the treatment of his Hepatitis C virus while incarcerated at a

federal prison in McKean County, Pennsylvania. Plaintiff alleges both constitutional claims under the Eighth Amendment and tort/negligence claims.

2. As a result, plaintiff seeks to recover compensatory and punitive damages.

3. Defendants were served with the Amended Complaint on June 22, 2005.

Accordingly, a responsive pleading and/or dispositive motion is currently due from defendants on August 22, 2005.

4. Defendants need additional time, however, to respond to the Amended Complaint. In particular, defendants include individuals who are being sued as a result of actions taken during their federal employment with the Federal Bureau of Prisons and, as a result, the individuals are currently requesting representation in this action from the Department of Justice. The United States Attorney, in turn, may not represent the individual defendants until such representation requests are approved by the Department of Justice.

5. To date, such approval has not yet been received.

6. Defendants therefore request an additional thirty (30) days, or until September 21, 2005, to respond to the allegations set forth in plaintiff's Amended Complaint.

7. Such a brief extension will not unduly delay this litigation.

8. Neither this motion, the limited representation by the Department of Justice for purposes of this motion, nor the individual defendants' requests for representation are intended to waive any defense which may be asserted in this case.

9. Plaintiff is a *pro se* inmate and, as a result, he has not been contacted regarding his consent or opposition to this motion.

WHEREFORE, defendants respectfully request that the Court grant their request for a thirty (30) day extension, or until September 21, 2005, to file their responsive pleading and/or dispositive motion to plaintiff's Amended Complaint.

A proposed order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Megan E. Farrell

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PA ID # 76972

Counsel for Defendants

Dated: August 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2005, a true and correct copy of the within Motion to Extend Time to File a Responsive Pleading and/or Dispositive Motion was served via first-class mail upon the following:

Darryl Lee Cherry
Reg. No. 07928-078
FCI McKean
P.O. Box 8000
Bradford, PA 16701

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney